IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO 538 OF 1990
DATE OF DECISION: 19.07.2006

SMT. SURINDER KAUR AND OTHERS

....APPELLANTS

VERSUS

LAKHBIR SINGH AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. B.R. MAHAJAN, ADVOCATE
FOR THE APPELLANTS

MR. H.N.S. GILL, ADVOCATE
FOR THE RESPONDENTS

JUDGEMENT

This is an appeal filed on behalf of widow, minor son and daughters of deceased Sat Pal, against the award of Motor Accident Claims Tribunal, Amritsar (for short 'the Tribunal') dated 24.4.1990 whereby application for claim filed by the appellants is dismissed.

Brief facts of the case available on record are that Sat Pal, husband of appellant No.1, and father of appellant Nos. 2 to 5 was travelling in a truck bearing No. PJA 3568 driven by Lakhbir Singh on 27.4.1984. When the truck reached near Baba Budha Sahib, Kathunangal on its way from Amritsar towards Batala, the driver of the truck stopped the same on the road and started talking to some person. After completing the discussion, he suddenly started the truck and turned towards Gurdwara Baba Budha Sahib. From opposite side, bus No. PBN 9655 came and hit the truck on its front, resulting in serious injuries to deceased Sat Pal. It is pleaded that accident took place because of rash and negligent driving of the driver of the truck. Deceased was initially admitted to Civil Hospital, Batala and subsequently shifted to Shri Guru Teg Bahadur Hospital, Amritsar where he succumbed to his injuries on 28.4.1984. It is further pleaded that deceased was 36 years of age and was the sole bread earner for his family.

He was trading in the business of buffaloes, thereby earning Rs. 1200/- per month, out of which he contributed Rs. 900/- per month for his family members.

In reply filed by the driver, the accident is not disputed. There is no evidence on record by the respondents. In support of their case, the claimants produced Piara Singh AW-2, who was working in the nearby fields and witnessed the accident. The learned Tribunal, while discarding the evidence of the claimants, rejected the claim petition.

To challenge the findings recorded by the Tribunal, counsel for the appellants submitted that the accident in the present case is admitted by the respondents. On the issue as to whether the truck was stationary, so it was not at fault, the counsel submitted that it has come in the FIR, which was recorded at the instance of the driver of the bus with which the accident took place that the truck, which was stationary, started all of a sudden and came in front of the bus which had already reached nearby and in spite of the driver of the bus having applied strong brakes, truck hit the bus. The allegations in the FIR to that effect and that the driver of the truck ran away from the spot after the accident, have not been disputed.

In fact, the truck was not stationary and was being driven, though at a low speed at the time of accident, is not even denied by the driver in his reply to the claim petition. It is further relevant to add here that neither the owner nor the driver has led any evidence in the present case. Counsel has further argued that the learned Tribunal has gone wrong in not considering the FIR which is on record as Ex. PB, which records true facts and the first hand information of the occurrence. To buttress his arguments reliance has been placed on record in **Girdhari Lal vs. Radhey Shyam and others** 1993(2) Punjab Law Reporter 109, **Bansi Yadav and another vs. Krishan Kumar and another** 2004(2) Punjab Law Reporter 234, **Nikki and Ors vs. Darshan Singh & Anr.** 2006(1) Civil Court Cases 519 (P&H) and **Nirmala Kumari & Ors. vs. Union of India and Anr.** 2006 (1) Civil Court Cases 782 (P&H).

Ratio of the judgments being that an FIR being a public document is admissible in evidence as such and if no objection is raised at the time of production thereof, the same is to be read in evidence. In the

present case, though the respondents have been contesting the claim petition throughout no evidence whatsoever has been produced by them.

Only reliance placed by the respondents is on the statement of AW -2, Piara Singh who stated during the evidence that the truck was parked in the middle of the road in the chowk when the accident took place, which cannot be relied in preference to the admission of the driver of the truck himself that the truck in fact was moving at the time the accident took place. Once it is established that the truck was moving, the plea that the bus struck the truck which was stationary has to be rejected outrightly. As far as recording of number of the truck by Piara Singh, it is suffice to record that it has come in his cross examination that he was illiterate, so there arises no question of recording the number of the truck or the bus by this witness.

In view of above discussion, I reverse the findings recorded by the Tribunal on the issue and hold that accident took place because of rash and negligent driving of respondent No.1.

In view of the findings on the accident not having taken place, learned Tribunal had not recorded any findings on other issues. There are two options open in such a situation, one is to remand the case to the Tribunal to proceed further in accordance with law and another being decision of the case by this Court.

Keeping in view the fact that the accident in the present case, took place in April, 1984, and proceedings are pending for the last more than 22 years, counsel for the parties consented for decision of the case by this Court as far as determination of compensation is concerned. Accordingly, I proceed to decide the quantum of compensation to the claimants/appellants in terms of evidence already on record.

It is not in dispute that respondent No. 3 Narinder Singh was the owner of the vehicle and Lakhbir Singh respondent No.1 was the driver.

As far as quantum of compensation is concerned, evidence on record is that deceased Sat Pal, aged about 36 years was engaged in business of trading of buffaloes and he was earning Rs. 1200/- per month and was contributing Rs. 900/- per month for the family. No evidence was led by the respondents to controvert this plea of the appellants.

Taking the conservative view of the matter, and also keeping in

view the fact that deceased Sat Pal was supporting the family consisting of his wife and four minor children at the time of his death, I estimate his income at Rs. 1000/- per month and apply a cut off 30% and assess the dependency at Rs. 700/- per month i.e. Rs. 8400/- per annum. Applying a multiplier of 16, the amount of compensation is assessed at Rs. 1,34,400/- which is rounded to Rs. 1,35,000/- to be paid by the respondents jointly and severely. In addition to the compensation, the appellants will also be entitled to interest at the rate of 7.5% per annum on the amount of compensation from the date of institution of the claim petition i.e. 16.1.1986 till its realisation.

As per order of this Court dated April 24, 1995, the appellants were paid a sum of Rs. 25,000/-. Accordingly, balance amount of compensation of Rs. 1,10,000/- shall be paid to the claimants/ appellants along with interest. The amount of compensation alongwith interest thereon will be disbursed amongst the appellants in the following manner i.e. 50 % shall be paid to appellant No.1, widow of deceased Sat Pal and balance 50 % in equal shares amongst appellant Nos. 2 to 5.

Accordingly, the appeal is accepted in the manner indicated above and the award of the Tribunal is set aside.

July 19, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**